

CONCLUSION OF MORNING  
BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

## EXECUTIVE SESSION

NOMINATIONS OF LEONARD E. DAVIS TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF TEXAS; ANDREW S. HANEN TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS; SAMUEL H. MAYS, JR. TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TENNESSEE; THOMAS M. ROSE TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF OHIO

The ACTING PRESIDENT pro tempore. Under the previous order, the hour of 10:35 having arrived, the Senate will now go into executive session and proceed to the consideration en bloc of Executive Calendar Nos. 811, 812, 813, and 814, which the clerk will report.

The assistant legislative clerk read the nominations of Leonard E. Davis, of Texas, to be U.S. District Judge for the Eastern District of Texas;

Andrew S. Hanen, of Texas, to be U.S. District Judge for the Southern District of Texas;

Samuel H. Mays, Jr., of Tennessee, to be U.S. District Judge for the Western District of Tennessee;

Thomas M. Rose, of Ohio, to be U.S. District Judge for the Southern District of Ohio.

The ACTING PRESIDENT pro tempore. Under the previous order, there will be 1 hour of debate on the nominations, to be equally divided between the chairman and ranking member of the Judiciary Committee or their designees.

The Senator from Vermont.

Mr. LEAHY. Madam President, today the Senate is considering, as the Chair has reported, four more of President Bush's judicial nominees. We will begin voting on those nominees in about an hour.

I rarely predict the outcome of votes in the Senate. Having been here 28 years, I have had enough chances to be wrong in my predictions, but I will predict, with a degree of certitude, that these will be another four of President Bush's judicial nominees that we will confirm.

These confirmations demonstrate, as has been demonstrated with each of the judges we have confirmed in the past ten months, with the exception of one, that we have taken up nominees in the Senate Judiciary Committee, that they have gone through the committee and, when they have reached the floor, have been confirmed.

Democrats have demonstrated over and over again that we are working with the President on fundamental issues that are important to this country, whether it is our support for the

war on terrorism, support for strong and effective law enforcement, or our effort to work collaboratively to lower judicial vacancies.

For a bit of history, when the Democrats took over the full Judiciary Committee in July of last year, there were 110 vacancies. My Republican colleagues had not held any judicial confirmation hearings at all prior to the time we took over, despite the fact that there were a number of pending nominations when they first came into power. Then there were, of course, nominations that President Bush sent to the Senate in May. But as of July, when we took over, the Republican-controlled committee had not held any hearings. Ten minutes after we took over the committee and I became chairman, we announced hearings on a number of the President's nominees.

I mention this to put in perspective that we have tried to move quickly. We inherited 110 vacancies. Interestingly enough, most of the vacancies occurred while the Republicans were in control of the Senate, notwithstanding the fact that former President Clinton had nominated people to fill most of those vacancies. But those nominees were never given a hearing. They were never allowed, under Republican leadership, to go forward.

Last Friday, when the Democratic Senators were out of town on a long planned meeting, President Bush spoke about what he now calls the "judicial vacancy crisis." I was disappointed that the White House speech writers chose a confrontational tone and tried to blame the Democratic Senate majority, which has actually been the majority in the Judiciary Committee for only about 10 months.

The fact is, we inherited 110 judicial vacancies on July 10, 2001. The fact is, the increase in vacancies had not occurred on the watch of the Democratic Senate majority but in the period between January 1995 and July 2001, when the Republican majority on the committee stalled President Clinton's moderate nominees and overall vacancies rose by almost 75 percent—from 63 to 110. That is what we inherited because the other side would not hold hearings. Vacancies on the courts of appeals rose even more. They more than doubled, from 16 to 33.

I don't expect President Bush to know these numbers or to be that involved with them. But his staff does, and when they write his speeches, they ought to do him the favor of being truthful. They ought to know that the Federal judiciary is supposed to be independent and outside of partisan political battles, and they should not have drawn him into one, which makes it even worse.

It is bad enough when Republicans in the Senate threaten and seek to intimidate on this issue, but we are now being threatened with a shutdown of the Senate's business, a shutdown of committee hearings, a refusal to work together on unemployment, trade, and

other important matters. It was bad enough when they utilized secret holds and stalling tactics in considering President Clinton's moderate judicial nominees, but now they bemoan the judicial vacancies that were created and take no responsibility for creating these vacancies. They seek to blame others. It is really too bad that the White House now appears to be rejecting all of our efforts—and they have been significant—at reconciliation and problem solving. Instead, the White House has joined the partisan attack.

The fact is, since last July, when we took over the majority, we have been working hard to fill judicial vacancies. We have had more hearings on more judicial nominees and confirmed more judges than our Republican predecessors ever did over any similar period of time. Actually, it is hard to know when there was a similar period in time. The Senate and the Judiciary Committee had to work in the aftermath of the attacks of September 11 and we kept on meeting. We were in this Chamber on September 12. We had the anthrax attacks on the Senate, on Majority Leader DASCHLE and, I hate to say, one on me, as chairman of the Senate Judiciary Committee. The New York Times reported it as the most deadly of all. While working to fill judicial vacancies, we were also approving executive branch nominees—Attorney General Ashcroft and others—and we were considering the Antiterrorism Act.

In my 28 years here, I have never known a time when the Judiciary Committee, or any committee, was hit with so many things that it had to do in such a short period of time and under so much pressure. The Hart Building, housing half of the Senators, was closed down. At times, this building was closed down. Senator DASCHLE and I and our staffs were under actual physical attacks with the anthrax letters. I mention that because this afternoon we are going to hold our 18th hearing for judicial nominees within 10 months—unless, of course, the other side objects to our proceeding.

By the end of today, the Senate will have confirmed 56 new judges, including 9 to the courts of appeals, within the last 10 tumultuous months—an all-time record.

I am sorry that the White House and our Republican colleagues do not acknowledge our achievements but choose, instead, to only criticize. I regret that the White House and our Republican colleagues will not acknowledge that the obstructionism of the Republican Senate majority between 1996 and 2001 is what created what they now term a "vacancy crisis."

When they were engaged in those tactics, some Republicans defended their record then by arguing that 103 vacancies was not a crisis. They actually did that. They said in an op-ed piece that having 103 vacancies was not a crisis. They let it go to 110.

The Democratic majority has cut back those vacancies. We have not only